

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs December 19, 2005

IN RE: ESTATE OF MELVIN GANT

**Appeal from the Circuit Court for Davidson County
No. 05P427 Randy Kennedy, Judge**

No. M2005-00958-COA-R3-CV - Filed April 25, 2006

This appeal involves a dispute among siblings over who should serve as administrator of their deceased brother's estate. Following the decedent's death without a will, the decedent's brother filed a pro se petition in the Circuit Court for Davidson County seeking to be named administrator. The decedent's two sisters opposed the petition. Following a hearing, the trial court appointed the public administrator to administer the estate. On this appeal, the decedent's brother takes issue with the trial court's refusal to appoint him as administrator. We affirm the trial court's decision.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed

WILLIAM C. KOCH, JR., P.J., M.S., delivered the opinion of the court, in which WILLIAM B. CAIN and PATRICIA J. COTTRELL, JJ., joined.

Johnny Gant, Nashville, Tennessee, Pro Se.

MEMORANDUM OPINION¹

Melvin Gant died intestate on October 16, 2004. His surviving heirs included a brother, Johnny Gant, two sisters, Alfreda Gant and Teresa Gant Hailey, and a seventeen-year-old son. On March 16, 2005, Johnny Gant filed a pro se petition in the Circuit Court for Davidson County, seeking appointment as administrator of his brother's estate.

On March 24, 2005, Alfreda Gant and Teresa Hailey filed a pro se response opposing Johnny Gant's petition. They stated that Melvin Gant's estate consisted of a 1994 Ford Thunderbird XL

¹Tenn. Ct. App. R. 10 provides:

The Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion, it shall be designated "MEMORANDUM OPINION," shall not be published, and shall not be cited or relied on for any reason in any unrelated case.

valued at \$3,000 and a life insurance policy naming Melvin Gant's predeceased mother and his son as beneficiaries. They also stated that they had paid a portion of their brother's funeral expenses and that they hoped that the Thunderbird could be sold to pay the remaining expenses. Accordingly, they requested the trial court to order Johnny Gant to return the Thunderbird.

On April 8, 2005, following a hearing, the trial court entered an order appointing Peggy Mathes, the public administrator, as the administrator of Melvin Gant's estate and issuing her letters administration. Johnny Gant filed a pro se notice of appeal. He argues that the trial court erred by appointing a "stranger" to administer Melvin Gant's estate rather than a family member.

Tenn. Code Ann. § 30-1-106 (Supp. 2005) provides guidance to the courts when they are called upon to appoint an administrator for a person who dies intestate. However, because the courts have considerable discretion with regard to the appointment of administrators of intestate estates, *Lakins v. Isley*, 200 Tenn. 353, 358, 292 S.W.2d 389, 391 (1956), they may disregard the statutory order of preference if the personal fitness of the persons seeking to serve as administrator is questioned. *Commerce Union Bank v. Fox*, 28 Tenn. App. 587, 589, 192 S.W.2d 233, 234 (1945). The court may appoint someone other than a next-of-kin, including the public administrator, to serve as administrator of an intestate estate if "the interest of the estate requires." Tenn. Code Ann. § 30-1-405 (2001).

Trial courts making discretionary decisions must take the applicable law and facts into account. *Ballard v. Herzke*, 924 S.W.2d 652, 661 (Tenn. 1996). A trial court's discretionary decision will be upheld as long as it is not clearly unreasonable, *Bogan v. Bogan*, 60 S.W.3d 721, 733 (Tenn. 2001), and reasonable minds can disagree about its correctness. *Eldridge v. Eldridge*, 42 S.W.3d 82, 85 (Tenn. 2001); *State v. Scott*, 33 S.W.3d 746, 752 (Tenn. 2000).

Based upon our review of the record, the trial court did not abuse its discretion in appointing Peggy Mathes as the administrator of Melvin Gant's estate. Therefore, we affirm the April 8, 2005 order and remand this case to the trial court for any further proceedings consistent with this opinion. We tax the costs of this appeal to Johnny Gant for which execution, if necessary, may issue.

WILLIAM C. KOCH, JR., P.J., M.S.